

AMENDED IN SENATE APRIL 29, 2003

SENATE BILL

No. 839

Introduced by Senator Dunn

February 21, 2003

An act to amend ~~Section~~ *Sections 10335.5 and 10365.5 of, and to add Chapter 4 (commencing with Section 22150) to Part 3 of Division 2 of, the Public Contract Code, relating to conflict of interest.*

LEGISLATIVE COUNSEL'S DIGEST

SB 839, as amended, Dunn. Public contracts: consulting services.

(1) ~~The existing State Contract Act~~ *Existing law, with specified exemptions*, prohibits a person, firm, or subsidiary thereof that has been awarded a *state* consulting services contract from submitting a bid for, or being awarded a contract for, the provision of services, the procurement of goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract. A willful violation of these provisions is a misdemeanor, under other provisions.

This bill would revise those provisions ~~of the act~~ to also prohibit a person, firm, or subsidiary thereof that has been awarded a consulting services contract from ~~being financially interested~~ *having a financial interest, as defined*, in the provision of services, the procurement of goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract, *as defined*. *This bill would also impose similar provisions applicable to any person, firm, or subsidiary to whom a city, county, district, or other local government entity has awarded a consulting services contract.*

The bill would, *with respect to both the state and local consulting contract provisions*, specify that a willful violation ~~of the existing prohibition against submitting a bid or being awarded a contract, or the additional prohibition against being financially interested, of these provisions~~ is punishable by a fine of not more than \$1,000 and imprisonment in the county jail not exceeding one year or by imprisonment in the state prison.

By creating a new crime and increasing the penalty for an existing crime, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. It is the intent of the Legislature that the~~
2 ~~financial interest prohibited by Section 10365.5 of the Public~~
3 ~~Contract Code be given as broad an interpretation as the financial~~
4 ~~interest prohibited in Section 1090 of the Government Code.~~
5 *SECTION 1. Section 10335.5 of the Public Contract Code is*
6 *amended to read:*
7 10335.5. (a) “Consulting services contract,” as used in this
8 article, ~~means services that do all of the following:~~
9 ~~(1) Are of an advisory nature.~~
10 ~~(2) Provide a contract for advice, a recommended course of~~
11 ~~action, or the consultant’s personal expertise.~~
12 ~~(3) Have expertise, with an end product that is basically~~
13 ~~includes a transmittal of information either written or verbal and~~
14 ~~that is related to the governmental functions of state agency~~
15 ~~administration and management and program management~~
16 ~~functions, including administration, management, or innovation.~~
17 ~~(4) Are obtained by awarding a contract, a grant~~
18 (b) Consulting services contracts include contracts, grants, or
19 any other payment of funds for services of the above type.
20 The

1 (c) *The end* product may include anything from answers to
2 specific questions to design of a system or plan, and includes
3 workshops, seminars, retreats, and conferences for which paid
4 expertise is retained by contract.

5 ~~(b)~~

6 (d) “Consulting services contract” does not include any of the
7 following:

8 (1) Contracts between a state agency and the federal
9 government.

10 (2) Contracts with local agencies, as defined in Section 2211 of
11 the Revenue and Taxation Code, to ~~subvene~~ *provide subvention for*
12 federal funds for which no matching state funds are required.

13 ~~(e)~~

14 (e) The following consulting services contracts are exempt
15 from the advertising and bidding requirements of this article:

16 (1) Contracts that are temporary or time-limited appointments
17 to a nontesting civil service classification for the purpose of
18 meeting a time-limited employment need. Selection and
19 compensation for these appointments shall be made in accordance
20 with state civil service requirements. Payment under a consulting
21 service contract may be on the basis of each hour or day devoted
22 to the task or in one lump sum for the end product.

23 (2) Contracts that can only be performed by a public entity as
24 defined in subdivision (b) of Section 605 of the Unemployment
25 Insurance Code.

26 (3) Contracts solely for the purpose of obtaining expert
27 witnesses for litigation.

28 (4) Contracts for legal defense, legal advice, or legal services.

29 (5) Contracts in an amount of less than five thousand dollars
30 (\$5,000).

31 (6) Contracts entered into pursuant to Section 14838.5 of the
32 Government Code.

33 SEC. 2. Section 10365.5 of the Public Contract Code is
34 amended to read:

35 10365.5. (a) No person, firm, or subsidiary thereof that has
36 been awarded a consulting services contract may submit a bid for,
37 ~~nor or be awarded a contract for, or be financially interested have~~
38 *a financial interest* in, the provision of services, the procurement
39 of goods or supplies, or any other related action that is required,

1 suggested, or otherwise deemed appropriate in the end product of
2 the consulting services contract.

3 (b) Subdivision (a) does not apply to any person, firm, or
4 subsidiary thereof that is awarded a subcontract of a consulting
5 services contract that amounts to no more than 10 percent of the
6 total monetary value of the consulting services contract.

7 (c) Subdivisions (a) and (b) do not apply to consulting services
8 contracts subject to Chapter 10 (commencing with Section 4525)
9 of Division 5 of Title 1 of the Government Code.

10 (d) Any person, firm, or subsidiary thereof that willfully
11 violates this section is punishable by a fine of not more than one
12 thousand dollars (\$1,000) and imprisonment in the county jail not
13 exceeding one year or by imprisonment in the state prison.

14 ~~SEC. 3.—~~

15 (e) *As used in this section, the term “financial interest” means*
16 *any expectation of a material economic benefit to the consultant,*
17 *or the consultant’s spouse or cohabitant, resulting from the*
18 *recommended action.*

19 SEC. 3. Chapter 4 (commencing with Section 22150) is added
20 to Part 3 of Division 2 of the Public Contract Code, to read:

21
22 CHAPTER 4. CONTRACTS FOR SERVICES
23

24 22150. (a) *No person, firm, or subsidiary thereof, to which a*
25 *city, county, district, or other local government entity has awarded*
26 *a consulting services contract may submit a bid for, or be awarded*
27 *a contract for, or have a financial interest in, the provision of goods*
28 *or supplies, or any other related action that is required, suggested,*
29 *or otherwise deemed appropriate in the end product of the*
30 *consulting services contract.*

31 (b) *Subdivision (a) does not apply to any person, firm, or*
32 *subsidiary thereof that is awarded a subcontract of a consulting*
33 *services contract that amounts to no more than 10 percent of the*
34 *total monetary value of the consulting services contract.*

35 (c) *Subdivisions (a) and (b) do not apply to consulting services*
36 *contracts subject to Chapter 10 (commencing with Section 4525)*
37 *of Division 5 of Title 1 of the Government Code.*

38 (d) *Any person, firm, or subsidiary thereof that willfully*
39 *violates this section is punishable by a fine of not more than one*

1 *thousand dollars (\$1,000) and imprisonment in the county jail not*
2 *exceeding one year or by imprisonment in the state prison.*

3 *(e) As used in this section:*

4 *(1) "Financial interest" means any expectation of a material*
5 *economic benefit to the consultant, or the consultant's spouse or*
6 *cohabitant, resulting from the recommended action.*

7 *(2) "Consulting services contract" has the same meaning as*
8 *defined in Section 10335.5.*

9 *SEC. 4. No reimbursement is required by this act pursuant to*
10 *Section 6 of Article XIII B of the California Constitution because*
11 *the only costs that may be incurred by a local agency or school*
12 *district will be incurred because this act creates a new crime or*
13 *infraction, eliminates a crime or infraction, or changes the penalty*
14 *for a crime or infraction, within the meaning of Section 17556 of*
15 *the Government Code, or changes the definition of a crime within*
16 *the meaning of Section 6 of Article XIII B of the California*
17 *Constitution.*

